

Message Text

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ACTION INT-05

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R 190830Z FEB 75

FM AMEMBASSY TOKYO

TO SECSTATE WASHDC 8090

CINCPACREP GUAM/TTPI

INFO CDRUSAGO MAKIMINATO JAPAN/TTPI-LNO

C O N F I D E N T I A L SECTION 1 OF 2 TOKYO 2136

CINCPACREP PASS HICOM AND STATUS LNO SAIPAN

FOR HICOM AND STATUS LNO

DEPT PASS INTERIOR FOR DOTA AND OSN

E.O. 11652: GDS

TAGS: EAID JA TQ

SUBJ: MICRONESIA CLAIMS AGREEMENT

REF: A. TOKYO 1345 B. TOKYO 1294 C. TTPI 031

SUMMARY: EMBOFF DISCUSSED IMPLEMENTATION OF AGREEMENT WITH FONOFF REPS. FONOFF HOPES USG AND GOJ CAN AGREE ON EXTENSION OF PROCUREMENT PERIOD, AND TTPI SUBMIT PROCUREMENT PLANS, BASED ON INTERPRETATION OF AGREEMENT WHICH WOULD EQUATE END OF PROCUREMENT PERIOD WITH PAYMENT FROM SPECIAL ACCOUNT. FONOFF REQUESTS TTPI RICE EXPERT CONTRACT BE AMENDED BASED ON THIS INTERPRETATION. FONOFF HOPES USG CAN AGREE TO HANDLING OF SPECIAL ACCOUNT INTEREST ALONG LINES EXPLAINED IN EARLIER EMBASSY REFTELS. ACTION REQUESTED IS LISTED IN LAST PARAGRAPH. END SUMMARY.

1. ON FEB. 14 EMBOFF MET WITH FONOFF REPS (SASAKI,
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DEPUTY DIRECTOR, AND TANAKA, SECOND ECONOMIC COOPERATION

DIVISION) TO DISCUSS QUESTIONS RELATED TO IMPLEMENTATION OF CLAIMS AGREEMENT.

2. RE EXTENSION OF PROCUREMENT PERIOD:

A) SASAKI SAID FONOFF HAS REACHED DECISION RE INTERPRETATION OF QTE PROVISION OF THESE PRODUCTS AND SERVICES UNQTE AS USED IN ARTICLE I, PARA 2 OF THE CLAIMS AGREEMENT. (THIS DEFINITION IS RELEVANT TO TTPI'S QUESTION POSED REF C RE MEANING OF QTE END OF PROCUREMENT PERIOD UNQTE.) IN FONOFF VIEW, BY AND UPON MAKING PAYMENT FROM THE SPECIAL ACCOUNT, GOJ SHALL BE DEEMED TO HAVE SUPPLIED MICRONESIA WITH THE PRODUCTS OR SERVICES THUS PAID FOR. EMBOFF OBSERVED, AND SASAKI AGREED, THAT THIS INTERPRETATION WOULD BE A MIDDLE PATH BETWEEN THE MOST LIBERAL INTERPRETATION (EQUATING EXECUTION OF A CONTRACT WITH PROVISION) AND THE LEAST LIBERAL (EQUATING DELIVERY OF GOODS OR TERMINATION OF SERVICES WITH PROVISION). SASAKI SAID THAT THIS INTERPRETATION HAS BEEN USED IN GOJ REPARATIONS AND/OR AID AGREEMENTS WITH SEVERAL COUNTRIES, AND HAS BEEN EXPLICITLY STATED IN THE VARIOUS AGREEMENTS. EVEN THOUGH SUCH AN INTERPRETATION IS NOT EXPLICIT IN THE USG-GOJ AGREEMENT, FONOFF WOULD LIKE TO FOLLOW PRECEDENT AND APPLY THIS INTERPRETATION TO THE USG-GOJ AGREEMENT, AND HOPES USG WILL AGREE TO THIS INTERPRETATION.

B) SASAKI URGED TTPI SUBMIT A PROCUREMENT PLAN BASED ON THIS PROPOSED INTERPRETATION AS SOON AS POSSIBLE SO BOTH SIDES CAN THEN AGREE ON EXTENSION OF PROCUREMENT PERIOD OF APPROPRIATE LENGTH. (EMBOFF REMINDED SASAKI THAT PREPARATION OF SUCH A PLAN WOULD HAVE TO AWAIT RESOLUTION OF BUDGETARY MATTERS IN WASHINGTON, BUT UNDERTOOK TO RELAY RENEWED REQUEST AND RESPOND IN DUE COURSE.)

C) FOLLOWING AGREEMENT BETWEEN TWO SIDES, SAID SASAKI, AGREEMENT SHOULD BE FORMALLY CONSUMMATED BY EXCHANGE OF DIPLOMATIC NOTES.

D) FONOFF IS PRESENTLY IN POSSESSION OF TTPI'S PROPOSED CONTRACT FOR PROVISION OF SERVICES BY RICE EXPERT OVER TWO-YEAR PERIOD. AS THAT TWO-YEAR PERIOD WILL RUN WELL PAST EXPIRATION DATE OF ORIGINAL PROCUREMENT PERIOD, FONOFF CANNOT NOW CONFIRM THIS CONTRACT AS IT IS WRITTEN.

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ASSUMING USG ACCEPTS FONOFF PROPOSAL RE INTERPRETATION TO BE APPLIED TO TERM QTE PROVISION ETC. UNQTE (PARA 2A ABOVE), TWO SOLUTIONS APPEAR POSSIBLE:

1) AMEND THE PRESENT CONTRACT SO THAT THE CONTRACTED- FOR TERM OF SERVICES RUNS UNTIL MAY 26, 1975 (WHICH WOULD BE LAST DAY OF THREE YEAR PERIOD WHICH BEGAN MAY 27, 1972) AND MAKE PAYMENT FOR THIS CONTRACT NO LATER THAN MAY 26, 1975; THEN, FOLLOWING USG-GOJ AGREEMENT ON

EXTENSION OF PROCUREMENT PERIOD, AMEND CONTRACT AGAIN TO PROVIDE FOR SERVICES OVER TWO-YEAR PERIOD AS ORIGINALLY PLANNED.

2) AMEND ONLY THAT PORTION OF CONTRACT DEALING WITH PAYMENT TO PROVIDE THAT TOTAL PAYMENT WILL BE MADE IN SINGLE INSTALLMENT PRIOR TO MAY 26, 1975. THIS WOULD ALLOW EXECUTION OF CONTRACT TO BEGIN SOON REGARDLESS OF STATUS OF OTHER PENDING ISSUES. FONOFF WOULD VERY MUCH PREFER THIS APPROACH. IN RESPONSE TO EMBOFF'S OBSERVATION THAT ADVANCE PAYMENT FOR CONTRACT TO BE PERFORMED OVER TWO-YEAR PERIOD SEEMED RATHER RISKY, SASAKI NOTED THAT CONTRACT AS PRESENTLY WRITTEN CALLS FOR FOUR PAYMENTS AT SIX MONTH INTERVALS, EACH PAYMENT BEING IN ADVANCE FOR SERVICES TO BE PERFORMED DURING THE FOLLOWING SIX

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MONTHS. TTPI THUS HAS ALREADY INDICATED ITS WILLINGNESS TO ASSUME SOME DEGREE OF RISK. RISK COULD BE REDUCED, SAID SASAKI, BY INSERTION OF APPROPRIATE SPECIAL PROVISION IN CONTRACT TO EFFECT THAT AMOUNT OF PAYMENT MAY BE READJUSTED (DOWNWARD) TOWARDS END OF CONTRACT PERIOD IF EXPERT'S PERFORMANCE HAS BEEN UNSATISFACTORY. FURTHERMORE, IT WOULD SEEM REASONABLE TO RENEGOTIATE LOWER CONTRACT PRICE IF TOTAL PAYMENT IS TO BE IN ADVANCE. AT ANY RATE, IF THIS APPROACH IS ACCEPTABLE TO TTPI, FONOFF REQUESTS THAT 1) SPECIAL PROVISION BE INSERTED IN CONTRACT TO

EFFECT THAT PAYMENT WILL BE MADE FOR CONTRACT WITHOUT FAIL BY MAY 26, 1975, AND II) AMENDMENT BE EFFECTED BY SUBMISSION TO FONOFF OF NEW REQUEST FOR CONFIRMATION WHICH REFERS TO ORIGINAL CONTRACT AND TO ORIGINAL REQUEST FOR CONFIRMATION, ACCOMPANIED BY AMENDED PAGES FOR CONTRACT TO INCORPORATE AGREED CHANGES RE MANNER AND AMOUNT OF PAYMENT. BOTH PARTIES TO CONTRACT SHOULD INITIAL ANY AMENDED PAGES TO BE INSERTED INTO NEW CONTRACT. ALTERNATIVELY, ENTIRE NEW CONTRACT SIGNED BY BOTH PARTIES COULD BE SUBMITTED.

E) SASAKI SAID THIS KIND OF PROBLEM (I.E., PERFORMANCE EXTENDING BEYOND END OF ORIGINAL PROCUREMENT PERIOD) MAY AFFECT OTHER FORTHCOMING TTPI CONTRACTS, FOR INSTANCE CONTRACT FOR TUNA BOATS. IN CASE OF THIS KIND OF CONFIDENTIAL

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TRACT, WHERE PROGRESS PAYMENTS ARE CUSTOMARY, FONOFF DOUBTS TOTAL PAYMENT IN ADVANCE AS SUGGESTED FOR RICE EXPERT CONTRACT WOULD BE POSSIBLE. THUS, TO AVOID SUCH DIFFICULTIES, FONOFF HOPES TWO SIDES CAN MOVE FORWARD QUICKLY TO AGREEMENT ON EXTENSION OF PROCUREMENT PERIOD. THE PERIOD HAVING BEEN EXTENDED, CONTRACTS CALLING FOR PERFORMANCE BEYOND THE ORIGINAL EXPIRATION DATE CAN BE EXECUTED, CONFIRMED, AND PERFORMED WITHOUT DIFFICULTY.

3. RE USE OF INTEREST ON SPECIAL ACCOUNT: A) SASAKI SAID ALL GOJ MINISTRIES HAD NOW AGREED TO APPROACH OUTLINED IN REF A AND EARLIER, AND FONOFF HOPES USG WILL ALSO AGREE. (TO RECAPITULATE, THIS APPROACH WOULD CALL FOR FORMAL EXCHANGE OF NOTES BETWEEN EMBASSY AND FONOFF; LETTER FROM EMBASSY TO TAIYO KOBE BANK REQUESTING CHECKS AGAINST INTEREST ACCOUNT BE HONORED, AND AUTHORIZING PETERSON AND WENDLER TO SIGN THEM; COVER LETTER FROM PROCUREMENT OFFICER TO ACCOMPANY CONTRACT SUBMITTED TO FONOFF, EXPLAINING PROPOSED USE OF INTEREST TO PAY PORTION OF CONTRACTED COST; SPECIAL PROVISION IN CONTRACT EXPLAINING THAT PAYMENT WOULD BE IN FORM OF TWO CHECKS, ONE FROM SPECIAL ACCOUNT FOR X AMOUNT, THE OTHER FROM INTEREST ACCOUNT FOR Y AMOUNT; AND, PAYMENT BY ASST DISBURSEMENT OFFICER IN FORM OF TWO CHECKS.)

4. SUMMING UP, SASAKI SAID FONOFF WOULD LIKE TO EXECUTE BOTH NOTE EXCHANGES AT SAME TIME, BUT THAT, IF IT APPEARS AGREEMENT ON EXTENSION OF PROCUREMENT PERIOD WILL BE DELAYED AND USG WOULD PREFER TO MOVE AHEAD QUICKLY ON QUESTION OF INTEREST USE, FONOFF WOULD BE FLEXIBLE ON THIS POINT. FONOFF FEELS BOTH QUESTIONS MERIT URGENT ATTENTION, AND HOPES USG RESPONSES WILL BE FORTHCOMING, AND AGREEMENT REACHED, AS SOON AS POSSIBLE.

5. EMBASSY COMMENT. A) WITH EXPIRATION OF ORIGINAL PROCUREMENT PERIOD ONLY THREE MONTHS AWAY, PROBLEM WHICH IS NOW DELAYING FONOFF CONFIRMATION OF RICE EXPERT CONTRACT WILL AFFECT MORE AND MORE CONTRACTS SUBMITTED BY TTPI. CONFIRMATION, AND, THUS, PROCUREMENT MAY WELL COME TO A HALT UNTIL EXTENSION OF PROCUREMENT PERIOD HAS BEEN AGREED TO. ADDITIONAL CONCERN IS THAT CON-
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TINUING INFLATION IS CAUSING YEN CONTRIBUTION CON-
STANTLY TO DECLINE IN VALUE. EMBASSY WOULD HOPE THAT AWARENESS OF THESE PROBLEMS WOULD ENCOURAGE WASHINGTON AGENCIES TO DO BEST TO QUICKLY RESOLVE BUDGETARY ISSUES SO THAT AGREEMENT WITH GOJ MAY BE REACHED AND PROCUREMENT MOVE FORWARD.
B) LENGTH OF EXTENSION OF PROCUREMENT PERIOD TO BE REQUESTED WILL TAKE INTO ACCOUNT, AND DEPEND UPON, AGREED INTERPRETATION OF QTE PROVISION, ETC UNQTE (PARA 2B IF TTPI PERCEIVES DIFFICULTIES IN AGREEING TO FONOFF'S PROPOSED INTERPRETATION, EMBASSY SUGGESTS TTPI VIEWS PROMPTLY BE MADE KNOWN TO WASHINGTON AGENCIES (WITH INFO COPY TO EMBASSY) SO THAT THESE VIEWS MAY BE TAKEN INTO ACCOUNT IN DETERMINING LENGTH OF EXTENSION TO BE REQUESTED.

6. ACTION REQUESTED: A) HICOM: I) RESPONSE TO QUESTIONS POSED BY EARLIER REFTELS RE INTEREST USE, SPECIAL ACCOUNT, AND FY 1975 PROCUREMENT PLANS. II) ADVISE WHETHER FONOFF'S PROPOSED INTERPRETATION OF QTE PROVISION ETC. UNQTE IS ACCEPTABLE. III) ADVISE WHETHER RICE EXPERT CONTRACT WILL BE AMENDED ALONG LINES EXPLAINED ABOVE.
B) DEPARTMENT: I) ANY INFO RE PRESENT STATUS OF BUDGETARY MATTERS RELATED TO PROCUREMENT. II) ADVISE WHETHER FONOFF'S PROPOSED INTERPRETATION OF QTE PROVISION, ETC UNQTE IS ACCEPTABLE. III) WHEN AVAILABLE, RESPONSES TO QUESTIONS POSED BY EARLIER REFTELS.
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